

HOUSE BILL NO. 62

INTRODUCED BY H. JACOBSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT VACATION LEAVE MAY BE DONATED TO A NONREFUNDABLE SICK LEAVE FUND; PROVIDING THAT DONATED VACATION LEAVE IS NOT ELIGIBLE FOR CASH COMPENSATION UPON TERMINATION; AMENDING SECTIONS 2-18-617 AND 2-18-618, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-18-617, MCA, is amended to read:

**"2-18-617. Accumulation of leave -- cash for unused -- transfer.** (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611. Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is not eligible for cash compensation upon termination.

(3) ~~However, if~~ If an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

1           (4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided  
2 for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits  
3 advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.

4           ~~(4)~~(5) This section does not prohibit a school district from providing cash compensation for unused  
5 vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the  
6 absence of a collective bargaining agreement, through a policy."

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8           **Section 2.** Section 2-18-618, MCA, is amended to read:

9           **"2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day  
10 of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave  
11 credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working  
12 days for each year of service without restriction as to the number of working days that may be accumulated.  
13 Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

14           (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

15           (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the  
16 qualifying period.

17           (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work  
18 the qualifying period.

19           (5) A short-term worker may not earn sick leave credits.

20           (6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the  
21 agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave.  
22 The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or  
23 wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits  
24 for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the  
25 responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave  
26 rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within  
27 the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the  
28 receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and  
29 transferred with the employee.

30           (7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to

1 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who  
2 is again employed by any agency may not be credited with sick leave for which the employee has previously been  
3 compensated or for which the employee has received an employer contribution to the health care expense trust  
4 account.

5 (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in  
6 this section.

7 (9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave  
8 or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to  
9 draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave,  
10 irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established  
11 pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group  
12 benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement  
13 this subsection.

14 (10) A local government may establish and administer through local rule a sick leave fund into which its  
15 employees may contribute a portion of their accumulated sick leave or vacation leave."

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17 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2007.

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